

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

JEANNIE D. HELTON

PLAINTIFF

VS.

CIVIL ACTION NO. 1:00CV81-D-D

FIRST AMERICAN NATIONAL BANK
AND DR. KELLY SEGARS

DEFENDANTS

OPINION

This cause is before the court on the Defendants, First American National Bank and Dr. Kelly Segars', motion for summary judgment pursuant to Rule 56 of the *Federal Rules of Civil Procedure*. Upon due consideration, the court finds the motion is well taken and shall be granted.

As a preliminary matter, in the Plaintiff's response to the Defendants' motion for summary judgment, she concedes and withdraws all claims regarding the Americans with Disabilities Act, Equal Pay Act and all claims arising under Mississippi State law, as against all Defendants. She additionally concedes and withdraws her Title VII claim against the Defendant Dr. Kelly Segars. As such, the court shall consider these claims to be voluntarily dismissed. Likewise, the court will address only the Plaintiff's Title VII claims against the Defendant First American National Bank in the ensuing opinion, as it is the only remaining claim.

Factual Background

The Plaintiff, Jeannie D. Helton (Helton), was a long-time employee of the Defendant, First American National Bank (American), where she ultimately obtained the position of vice-president. Helton, due to a mental condition, received extensive time off from work in 1998 and 1999. In December of 1998, she returned to work after using all her 1998 Family Medical Leave Act (FMLA) time, her vacation time, and her sick days. Upon her return, she was placed in the

position of loan officer at the Burnsville, Mississippi branch of American, with no reduction in pay. She was fired, however, on July 19, 1999, after she exhausted her FMLA time for 1999 and American refused to consent to additional time off.

Helton signed and filed an EEOC charge on August 19, 1999, alleging that she was discriminated against due to her sex, by being constantly harassed and intimidated by the president of the bank, a male, thus creating a hostile work environment. American has presently filed this motion for summary judgment based solely upon the statutory 180 day limitation period in 42 U.S.C. §2000e-5(e)(1).

Summary Judgment Standard

On a motion for summary judgment, the movant has the initial burden of showing the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 325, 106 S.Ct. 2548, 2554, 91 L. Ed. 2d 265, 275 (1986) ("the burden on the moving party may be discharged by 'showing'...that there is an absence of evidence to support the non-moving party's case"). Under Rule 56(e) of the *Federal Rules of Civil Procedure*, the burden then shifts to the non-movant to "go beyond the pleadings and by...affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'" Celotex Corp., 477 U.S. at 324, 106 S.Ct. at 2553, 91 L. Ed. 2d at 274. That burden is not discharged by "mere allegations or denials." Fed. R. Civ. P. 56(e). All legitimate factual inferences must be made in favor of the non-movant. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255, 106 S.Ct. 2505, 2513, 91 L. Ed.2d 202, 216 (1986). Rule 56(c) mandates the entry of summary judgment "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp., 477 U.S.

at 322, 106 S.Ct. at 2552, 91 L. Ed. 2d at 273. Before finding that no genuine issue for trial exists, the court must first be satisfied that no reasonable trier of fact could find for the non-movant. Matsushita Elec. Indus. v. Zenith Radio Corp., 475 U.S. 574, 587, 106 S.Ct. 1348, 1356, 89 L. Ed. 2d 538, 552 (1986).

Discussion

A Title VII claimant must file charges with the EEOC within 180 days of the alleged illegal conduct. See 42 U.S.C. §2000e-5(e)(1). Helton signed and filed her EEOC charge on August 19, 1999, thus, all allegations of sex discrimination and/or harassment based on events occurring before February 21, 1999 (180 days prior to the EEOC charge) are time barred.

Helton argues that her transfer and continued requirement that she remain at the Burnsville, Mississippi branch of American is discriminatory. She states that it was a continuing act of harassment, and is therefore, not time-barred. The court does not agree.

In determining the timeliness of Helton's EEOC complaint, and this ensuing lawsuit, the court is required to identify precisely the "unlawful employment practice" of which she complains. In the case at hand, it is the transfer to the Burnsville, Mississippi branch and her continued employment at that location. Helton can point to no events of sexual harassment or discrimination, other than her mere continued employment with American, which could be considered discriminatory. Upon her return to work in December 1998, Helton requested that she be given a job helping with audits. This job did not exist, however, and American did not create the job for Helton or anyone else. Instead, American gave Helton a job as a loan officer at the Burnsville, Mississippi branch, with no reduction in pay. In November, 1998, American wrote Helton, who was then on FMLA leave and explained to her that she would be moved to the

Burnsville, Mississippi branch upon her doctor releasing her to return to work. The court finds that both these dates fall outside of the 180 time period described in 42 U.S.C. §2000e-5(e)(1) and therefore, Helton's claims are time-barred.

In Delaware State College v. Ricks, 449 U.S. 250, 257, 101 S.Ct. 498, 504, 66 L.Ed.2d 431 (1980), the United States Supreme Court declared that mere continuity of employment, without more, is insufficient to prolong the life of a cause of action for employment discrimination. Delaware, 449 U.S. at 257, 101 S.Ct. at 5041. They went on to state that the filing limitations period for a Title VII claim commenced, at the time the decision to deny tenure to a college professor was made and communicated to the plaintiff, not when he later eventually lost his position. Id. at 258.¹ Helton's case is similar in that she knew that she would be transferred to the Burnsville, Mississippi location in November, 1998; well outside her 180 day limitation period. Therefore, the court finds that her claims of discrimination due to her transfer and continued employment are time-barred.

Helton asks this court to allow her to circumvent the statutory 180 day limit citing, United Air Lines, Inc. v. Evans, 431 U.S. 553, 558, 97 S.Ct. 1885, 1889, 52 L.Ed.2d 571 (1997). The court finds, however, that Evans stated that "the emphasis should not be placed on mere continuity; the critical question is whether any present violation exists." Evans, 431 U.S. at 558, 97 S.Ct. at 1889. Helton must establish that at least one incident of sex discrimination occurred within the 180 day time period before she filed her EEOC claim, and that she did not know, or should not have known that the time-barred acts were discriminatory. Abrams v. Baylor College

¹ The court notes that Helton has not set forth any claims of equitable tolling based on her mental condition.

of Medicine, 805 F.2d 528, 532-34 (5th Cir.1986). Helton has failed to bring forward claims of harassment which occurred within the 180 day statutory period. Therefore, the court finds that American is entitled to summary judgment as a matter of law.

The court further notes that Helton has not pled a claim under Title VII for her actual termination. Only under the American with Disabilities Act, which she has now conceded.

A separate order in accordance with this opinion shall issue this day.

This the _____ day of May, 2001.

_____/s/
Chief Judge

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ORDER GRANTING SUMMARY JUDGMENT

Pursuant to an opinion issued this day, it is hereby ORDERED that:

- a. the Defendants' motion for summary judgment (docket entry # 25) is GRANTED;
- b. the Plaintiff's claims under the Americans With Disabilities Act, Equal Pay Act and Mississippi State law are voluntarily withdrawn and conceded by the Plaintiff and are DISMISSED WITHOUT PREJUDICE, as to all Defendants;
- c. the Plaintiff's claims under Title VII against the Defendant Dr. Kelly Segars are voluntary withdrawn and conceded by the Plaintiff and are DISMISSED WITHOUT PREJUDICE;
- d. the Plaintiff's claims arising under Title VII against the Defendant, First American National Bank are DISMISSED WITH PREJUDICE; and
- e. this case is CLOSED.

All memoranda, depositions, declarations and other materials considered by the court in ruling on this motion are hereby incorporated into and made a part of the record in this action.

SO ORDERED, this the _____ day of May, 2001.

/s/

Chief Judge